

Fiji Media Bill: Not so much sinister as plain amateurish

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WHAT AN extraordinary waste of energy everyone has to suffer over Fiji's Media Bill. Surely those who put it together must have predicted the media outcry – it is the media which has the greatest interest in it, after all. And, if Government is going to take a public beating for trying to control the media, it should at least have had a decent try at it.

Much as it pains a subversive like me to say it, you have to commend the Government, even if it has got the thing totally wrong, for putting out its Media Bill early for comment. It has circulated the *Media Council of Fiji Bill* and invited submissions before the Bill goes to Parliament; go to the Government website www.fiji.gov.fj and you get pointed to it straight away. So Government at least is not hiding anything.

As I see it, however, the Media Bill is not so much sinister as plain amateurish. It manages to make the Government look repressive without achieving any measure of real control over the media. So who is thinking out there?

The thing about governments everywhere, and ours is no exception, is that they cannot imagine how anything can work without them. So they pass legislation to control things in the belief that if there is legislation, everything will get better. Sometimes things do get better; sometimes they get worse; often the legislation is simply harmless (though pointless and expensive and rewarding for lawyers). However when the 'let's control everything' mentality is applied to something as important as the news media, the potential for abuse becomes serious.

The Media Bill does two particularly interesting things. First, it takes the existing self-regulating Media Council and turns it into a statutory body, with the State appointing a majority of its members. Second it takes the existing Media Code of Ethics and makes this, in effect, a regulation — a subsidiary law — which must be followed, and which the minister can change by himself without going back to Parliament.

The media say that the attempt to control the Media Council by ministerial appointment interferes with its independence. This is undoubtedly true. The minister gets to appoint the chairman; the media then appoint their 13 representatives; then the minister gets to appoint another 13 members ‘to be broadly representative of the communities of the Fiji Islands, their interests and concerns’. What does that mean? Whatever the minister wants it to mean — and if that means 13 members of the SDL party, that is who he can appoint.

More ominously, however, if the Minister can change the Media Code of Ethics with a stroke of the pen, he can change it to say ‘it will be unethical to criticise Government ministers in your news reports’. So then reports critical of Government will breach the Code of Ethics.

But this is where the fun starts, because as far as I can see the media can breach the Code of Ethics at will and go unpunished for it. There is power in the Bill to punish a media organisation for failing to appear before the Complaints Committee. But there is no power in the Bill to punish a media organisation for failing to comply with a Complaints Committee decision (which means that the minister will have no legal power to make his own regulations to punish anyone either).

The Media Council at the moment is really nothing more than a club of certain media organisations (not all of them are members). It has a complaints process. Essentially if you are unhappy with a media report you can complain to the council. If the council cannot resolve the dispute amicably, it is referred to the Complaints Committee. You must sign a waiver saying that if you use this process you will not sue the media organisation. The council’s Complaints Committee processes the complaint and if appropriate issues a ruling. If the ruling is against the offending news organisation, that organisation must print or broadcast that ruling.

So the Media Council cannot award damages or fine or imprison a media organisation for breaching the code. The Media Council delivers justice back through the media – by making the news media organisation publish a ruling saying it was wrong.

What does the Bill do? It tries to pick up the old Media Council (even tries to take its assets, which is a bit rude) and bring it under a new law. But it forgets that the existing council is held together only because the media organisations want to be its members and follow its rules. If media organisations don't like the new council, they can just ignore its Complaints Committee rulings — and under the Bill they cannot be punished for doing so.

Does this mean that after we trash the Media Bill everything should stay as it is? Not quite. We all know the importance of the news media in Fiji. For as long as anyone can remember, it has been more effective than the Parliamentary opposition at keeping Government corruption, inefficiency and general silliness in check. The media is certainly not perfect and in the course of treading on people's toes (which is part of its job) it has made mistakes and unfairly tarnished some people's reputations.

Balancing act for media rights

Media law is a balancing act. It must protect people's freedom of expression (a constitutional right) and their right to know things (the Constitution says we should have freedom of information legislation but it hasn't happened yet). But it must also protect people's rights of privacy (also a constitutional right) and their right not to have their reputations unfairly attacked (the law of defamation).

Different countries balance these rights different ways. In the United States, for example, you can publish just about anything critical or accusatory of anyone as long as you can show you did not do it maliciously. In most of the English law Commonwealth, including Fiji, the law is much more protective of people's reputations, sometimes at the cost of the public's right to know.

So, if Fiji's defamation laws had been more responsive to free speech and free information, would such disasters as the National Bank of Fiji, the Commodity Development Fund scam and the recent agricultural scam have been discovered earlier, or even stopped?

Even the English law world is now recognising that public figures such as politicians sacrifice certain rights to reputation when they exercise responsibilities over public funds and public policy. Two former prime ministers, Lange (New Zealand) and Reynolds (Irish Republic) have featured in recent cases where this re-balancing has been extensively discussed by judges.

Fiji's *Defamation Act* is now more than 30 years old and is quite out of step with modern thinking. A recent article I read in *The Economist* magazine said that in the 'wired' era we are all joining, personal privacy is going to be the hot

individual rights issue of the next 10 years. We have few if any laws which deal with privacy. And we urgently need a *Freedom of Information Act* which forces politicians and public officials to at least think about being more responsive and informative to us, the public, about the work we pay them to do.

These are the sort of issues the Government, if it is genuinely interested in modernising and improving the law, should be looking at. The Media Bill does not really get us anywhere useful at all.

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